by the Board in approving a stock acquisition would seem to have any application. In view of the objectives and purposes of the act, the word ''acquire'' would not seem reasonably to include transactions of this kind.

(c) On the other hand, the exercise by a bank holding company of the right to subscribe to an issue of additional stock of a bank could result in an increase in the holding company's proportional interest in the bank. The holding company would voluntarily pay additional funds for the extra shares and would ''acquire'' the additional stock even under a narrow meaning of that term. Moreover, the exercise of such rights would cause the assets of the issuing company to be increased and in a sense, therefore, the ''size or extent'' of the bank holding company system would be expanded.

(d) In the circumstances, it is the Board's opinion that receipt of bank stock by means of a stock dividend or stock split, assuming no change in the class of stock, does not require the Board's prior approval under the act, but that purchase of bank stock by a bank holding company through the exercise of rights does require the Board's prior approval, unless one of the exceptions set forth in section 3(a) is applicable.

[22 FR 7461, Sept. 19, 1957. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.104 "Services" under section 4(c)(1) of Bank Holding Company Act.

(a) Section 4(c)(1) of the Bank Holding Company Act, among other things, exempts from the nonbanking divestment requirements of section 4(a) of the Act shares of a company engaged ''solely in the business of furnishing services to or performing services for'' its bank holding company or subsidiary banks thereof.

(b) The Board of Governors has had occasion to express opinions as to whether this section of law applies to the following two sets of facts:

(1) In the first case, Corporation X, a nonbanking subsidiary of a bank holding company (Holding Company A), was engaged in the business of purchasing installment paper suitable for investment by banking subsidiaries of Holding Company A. All installment paper purchased by Corporation X was sold by it to a bank which is a subsidiary of Holding Company A, without recourse, at a price equal to the cost of the installment paper to Corporation X, and with compensation to the latter based on the earnings from such paper remaining after certain reserves, expenses and charges. The subsidiary bank sold participations in such installment paper to the other affiliated banks of Holding Company A which desired to participate. Purchases by Corporation X consisted mainly of paper insured under Title I of the National Housing Act and, in addition, Corporation X purchased time payment contracts covering sales of appliances by dealers under contractual arrangements with utilities, as well as paper covering home improvements which was not insured. Pursuant to certain service agreements, Corporation X made all collections, enforced guaranties, filed claims under Title I insurance and performed other services for the affiliated banks. Also Corporation X rendered to banking subsidiaries of Holding Company A various accounting, statistical and advisory services such as payroll, life insurance and budget loan installment account.

(2) In the second case, Corporation Y, a nonbanking subsidiary of a bank holding company (Holding Company B, which was also a bank), solicited business on behalf of Holding Company B from dealers, throughout several adjoining or contiguous States, who made time sales and desired to convert their time sales paper into cash; but Corporation Y made no loans or purchases of sales contracts and did not discount or advance money for time sales obligations. Corporation Y investigated credit standings of purchasers obligated on time sale contracts to be acquired by Holding Company B, Corporation Y received from dealers the papers offered by them and inspected such papers to see that they were in order, and transmitted to Holding Company B for its determination to purchase, including, in some cases, issuance of drafts in favor of dealers in order to facilitate their prompt receipt

of payment for installment paper purchased by Holding Company B. Corporation Y made collections of delinquent paper or delinquent installments, which sometimes involved repossession and resale of the automobile or other property which secured the paper. Also, upon request of purchasers obligated on paper held by Holding Company B, Corporation Y transmitted installment payments to Holding Company B. Holding Company B reimbursed Corporation Y for its actual costs and expenses in performing the services mentioned above, including the salaries and wages of all Corporation Y officers and employees.

(c) While the term ''services'' is sometimes used in a broad and general sense, the legislative history of the Bank Holding Company Act indicates that in section 4(c)(1) the word was meant to be somewhat more limited in its application. An early version of the bill specifically exempted companies engaged in serving the bank holding company and its subsidiary banks in ''auditing, appraising, investment counseling''. The statute as finally enacted does not expressly mention any specific type of servicing activity for exemption. In recommending the change, the Senate Banking and Currency Committee stated that the types of services contemplated are ''in the fields of advertising, public relations, developing new business, organizations, operations, preparing tax returns, personnel, and many others'', which indicates that latitude should be given to the range of activities contemplated by this section beyond those specifically set forth in the early draft of the bill. (84th Cong., 2d Sess., Senate Report 1095, Part 2, p. 3.) It nevertheless seems evident that Congress intended such services to be types of activities generally comparable to those mentioned above from the early bill (''auditing, appraising, investment counseling'') and in the excerpt from the Committee Report on the later bill (''advertising, public relations, developing new business, organization, operations, preparing tax returns, personnel, and many others''). This legislative history and the context in which the term ''services'' is used in section 4(c)(1) seem to suggest that the term was in general intended to refer to servicing operations which a bank could carry on itself, but which the bank or its holding company chooses to have done through another organization. Moreover, the report of the Senate Banking and Currency Committee indicated that the types of servicing permitted under section 4(c)(1) are to be distinguished from activities of a ''financial, fiduciary, or insurance nature'', such as those which might be considered for possible exemption under section 4(c)(6) of the Act.

(d) With respect to the first set of facts, the Board expressed the opinion that certain of the activities of Corporation X, such as the accounting, statistical and advisory services referred to above, may be within the range of servicing activities contemplated by section 4(c)(1), but that this would not appear to be the case with the main activity of Corporation X, which was the purchase of installment paper and the resale of such paper at cost, without recourse, to banking subsidiaries of Holding Company A. This latter and basic activity of Corporation X appeared to involve essentially a financial relationship between it and the banking subsidiaries of Holding Company A and appeared beyond the category of servicing exemptions contemplated by section 4(c)(1) of the Act. Accordingly, it was the Board's view that Corporation X could not be regarded as qualifying under section 4 (c)(1) as a company engaged ''solely in the business of furnishing services to or performing services for'' Holding Company A or subsidiary banks thereof.

(e) With respect to the second set of facts, the Board expressed the opinion that some of the activities engaged in by Corporation Y were clearly within the range of servicing activities contemplated by section 4(c)(1). There was some question as to whether or not some of the other activities of Corporation Y mentioned above could meet the test, but on balance, it seemed that all such activities probably were activities in which Holding Company B, which as already indicated was a bank, could itself engage, at the present locations of Corporation Y, without being engaged in the operation of bank

branches at those locations. In the circumstances, while the question was not free from doubt, the Board expressed the opinion that the activities of Corporation Y were those of a company engaged ''solely in the business of furnishing services to or performing services for'' Holding Company B within the meaning of section 4(c)(1) of the Act, and that, accordingly, the control by Holding Company B of shares in Corporation Y was exempted under that section.

[23 FR 2675, May 23, 1958. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.107 Acquisition of stock in small business investment company.

(a) A registered bank holding company requested an opinion by the Board of Governors with respect to whether that company and its banking subsidiaries may acquire stock in a small business investment company organized pursuant to the Small Business Investment Act of 1958.

(b) It is understood that the bank holding company and its subsidiary banks propose to organize and subscribe for stock in a small business investment company which would be chartered pursuant to the Small Business Investment Act of 1958 which provides for long-term credit and equity financing for small business concerns.

(c) Section 302(b) of the Small Business Investment Act authorizes national banks, as well as other member banks and nonmember insured banks to the extent permitted by applicable State law, to invest capital in small business investment companies not exceeding one percent of the capital and surplus of such banks. Section 4(c)(4) of the Bank Holding Company Act exempts from the prohibitions of section 4 of the Act ''shares which are of the kinds and amounts eligible for investment by National banking associations under the provisions of section 5136 of the Revised Statutes''. Section 5136 of the Revised Statutes (paragraph ''Seventh'') in turn provides, in part, as follows:

> Except as hereinafter provided or otherwise permitted by law nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation.

Since the shares of a small business investment company are of a kind and amount expressly made eligible for investment by a national bank under the Small Business Investment Act of 1958, it follows, therefore, that the ownership or control of such shares by a bank holding company would be exempt from the prohibitions of section 4 of the Bank Holding Company Act by virtue of the provisions of section 4(c)(4) of that Act. Accordingly, the ownership or control of such shares by the bank holding company would be exempt from the prohibitions of section 4 of the Bank Holding Company Act.

(d) An additional question is presented, however, as to whether section 6 of the Bank Holding Company Act prohibits banking subsidiaries of the bank holding company from purchasing stock in a small business investment company where the latter is a ''subsidiary'' under that Act.

(e) Section 6(a)(1) of the Act makes it unlawful for a bank to invest any of its funds in the capital stock of any other subsidiary of the bank holding company. However, section 6(a)(1) was, in effect, amended by section 302(b) of the Small Business Investment Act (15 U.S.C. 682) as amended by the Act of June 11, 1960 (Pub. L. 86–502) so as to nullify this prohibition when the ''subsidiary'' is a small business investment company.

(f) Accordingly, section 6 of the Bank Holding Company Act does not prohibit banking subsidiaries of the bank holding company from purchasing stock in a small business investment company organized pursuant to the Small Business Investment Act of 1958, where that company is or will be a subsidiary of the bank holding company.

[25 FR 7485, Aug. 9, 1960. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.109 "Services" under section 4(c)(1) of Bank Holding Company Act.

(a) The Board of Governors has been requested by a bank holding company for an interpretation under section 4(c)(1) of the Bank Holding Company Act which, among other things, exempts from the nonbanking divestment requirements of section 4(a) of the Act, shares of a company engaged ''solely in